2016 CHAPTER 18

PART 10

CRIMINAL JUSTICE

CHAPTER 6

UNFITNESS TO BE TRIED ETC

Procedure during trial on indictment

Procedure where question of fitness to be tried arises

204.—(1) This section applies where, on the trial of a person charged on indictment with the commission of an offence, the question arises (at the instance of the defence or otherwise) whether the accused is unfit to be tried.

(2) In the following provisions of this section that question is referred to as "the question of fitness to be tried".

(3) The question of fitness to be tried must be determined as soon as it arises; but this is subject to subsections (4) and (5).

(4) The court may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence if, having regard to the nature of the supposed condition of the accused, the court considers that the postponement is appropriate and is in the interests of the accused.

(5) If, before the question of fitness to be tried falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question must not be determined.

(6) The question of fitness to be tried is to be determined by the court without a jury.

(7) The court may determine that the accused is unfit to be tried only if it is satisfied on the required medical evidence that the accused is unfit to be tried.

(8) In this section "the required medical evidence" means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

Finding that the accused did the act or made the omission charged

205.—(1) This section applies where in accordance with section 204(6) it is determined by a court that the accused is unfit to be tried.

(2) The trial must not proceed or further proceed but it must be determined by a jury—

(a) on the evidence (if any) already given in the trial, and

(b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,

whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that the accused did the act or made the omission charged against the accused as the offence.

(3) If as respects that count or any of those counts the jury is satisfied as mentioned in subsection (2), it must make a finding that the accused did the act or made the omission charged against the accused.

(4) If as respects that count or any of those counts the jury is not so satisfied, it must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under subsection (2) is to be made by the jury by whom the accused was being tried.

Procedure in relation to finding of insanity

206.—(1) This section applies where, on the trial on indictment of any person charged with the commission of an offence—

(a) the required medical evidence is given that the person charged was an insane person at the time the offence was committed; and

(b) the jury finds that although the person charged did the act or made the omission charged, he or she was an insane person at that time.

(2) The court must direct a finding to be recorded to the effect that the person is not guilty of the offence charged on the ground of insanity.

(3) In this section—

"insane person" and "insanity" have the meanings given by section 1 of the Criminal Justice Act (Northern Ireland) 1966;

"the required medical evidence" means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

Powers to deal with person unfit to be tried or not guilty by reason of insanity

207.—(1) This section applies where—

(a) findings are recorded that the accused is unfit to be tried and that the accused did the act or made the omission charged; or

(b) a finding is recorded that the accused is not guilty by reason of insanity.

(2) Subject to the following provisions of this section, the court must—

(a) make a public protection order without restrictions (see section 167(3));

(b) make a public protection order with restrictions (see section 167(4));

(c) make a supervision and assessment order; or

(d) make an order for the absolute discharge of the accused.

(3) The power to make an order under subsection (2)(a) is exercisable only if the detention conditions are met.

(4) The power to make an order under subsection (2)(b) is exercisable only if the detention conditions and the restriction condition are met.

(5) Sections 168 and 169 (meaning of "the detention conditions" and "the restriction condition") apply for the purposes of this section (any reference to the offender being read as a reference to the accused, and any reference to the offence being read accordingly).

(6) The power to make an order under subsection (2)(c) is subject to Schedule 7, which makes provision about such orders.

(7) Where the offence to which the finding or findings relate is one for which the sentence is fixed by law—

(a) subsections (2) to (6) do not apply;

(b) the court must make a public protection order with restrictions; and

(c) the order must not include provision to the effect that it is to be treated as a public protection order with restrictions for a specified period only.

(8) Subject to section 208, a public protection order made under this section has the same effect as if it had been made under section 167 (as to that effect, see the provisions mentioned in section 167(5)).

Remission for trial where person no longer unfit to be tried

208.—(1) This section applies where—

(a) findings mentioned in section 207(1)(a) have been recorded in respect of a person;

(b) the person is liable to be detained under a public protection order made under section 207 or is subject to a supervision and assessment order made under that section; and

(c) a suitable medical practitioner notifies the Department of Justice that, in that practitioner's opinion, the person is no longer unfit to be tried.

(2) If the person is liable to be detained under a public protection order—

(a) the Department of Justice may remit the person to the Crown Court at the relevant place, for trial; and

(b) where it does so, the order ceases to have effect once the person has arrived at the Crown Court at the relevant place and the Crown Court has made any order relating to the trial.

(3) If the person is subject to a supervision and assessment order—

(a) the Department of Justice may remit the person's case to the Crown Court at the relevant place, for trial; and

(b) where it does so, the order ceases to have effect once the person's case has been so remitted and the Crown Court has made any order relating to the trial.

(4) In this section—

"the relevant place" means the place where, but for the findings mentioned in subsection (1)(a), the person would have been tried;

"a suitable medical practitioner" means—

(a) the responsible medical practitioner; or

(b) any approved medical practitioner.